IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8798 of 2004

IN

APPEAL NO.160 OF 2000

IN

R.A.E.SUIT NO.270 OF 1980

1.Smt.Lakshmi Subramanian
& others ...Petitioners
(orig.appellants)

vs.

1.Dhanpat Rai Dutta and
others. ...Respondents
(orig.respondents)

Mr.K.K.V.Kurup, for the Petitioners.

Mr.A.A.Joshi i/b. M/s.Subhash Pradhan & Co. for Respondents.

CORAM: R.M.S.Khandeparkar,J.

DATED: 1st November,2004

P.C.:-

1. Heard learned Advocates for the parties. Perused the record. The petitioners challenge the concurrent findings arrived at by the Courts below on the issue of acquisition of alternative suitable accommodation and sub-letting of the premises by the petitioners for their eviction from the suit

premises.

2. While challenging the impugned orders, it is sought to be argued on behalf of the petitioners that records clearly disclose that the leasehold rights in favour of the petitioners in relation to the suit premises were created in the year 1978 and the alternate accommodation was acquired by the petitioners in the year 1970. Being so, considering the provisions of law under Section 13(1)(l) of the Bombay Rents, Hotel Lodging House Rates Control Act,1947, such an acquisition of alternate accommodation prior to creation of tenancy cannot be the ground for eviction and this aspect has not been considered at all by both the Courts below. Secondly, as regards the ground of sub-letting, it is sought to be argued that undisputedly, the suit premises are in occupation of the son and other members of the petitioner's family, though petitioner no.1 might have shifted her residence to the alternate accommodation and therefore, such a situation cannot amount to sub-letting of premises. The contentions sought to be raised on behalf of the petitioners are seriously disputed by the learned Advocate appearing for the Respondents.

3. Undisputedly, the suit premises were let to the mother-in-law of the petitioner no.1 in the year 1957. Consequent to the death of mother-in-law, the tenancy continued in favour of the petitioner no.1. Such a continuation of tenancy in favour of the legal representative within the meaning of the said expression under Section 5(11) of the Bombay Rent, Hotel and Lodging, House Rates Control Act, 1947, cannot amount to creation of new tenancy as such, but it is the case of continuation of tenancy. Viewed from this angle, the tenancy in relation to the suit premises was created in favour of the Petitioner no.1 in the year 1978 consequent to the death of original lessee, being a family member of the deceased-original lessee, cannot be construed as creation of new tenancy in relation to the suit premises in favour of the petitioner no.1.

4. Undoubtedly, the alternate accommodation was acquired by the petitioner no.1 in the year 1970 and she shifted her residence in newly acquired premises in the year 1978 and since then the original defendant no.2 and his family members

started occupying the suit premises. The findings of the Court below as well as records in that regard are very clear. In such circumstances, it

is therefore, clear that the alternate accommodation was acquired by the petitioner no.1 during the subsistence of tenancy in favour of the predecessor of the petitioner no.1. Such a predecessor was not a stranger to the petitioner no.1 but the elder member of her family. It is not the case of the petitioner no.1 that consequent to the death of the original lessees, totally new tenancy was created by any document or even by oral dealings with the landlord in that regard. Inspite of repeated query with the learned Advocate for the petitioners and even though various parts of evidence recorded before the Trial Court were referred to in relation to the contention that the fresh tenancy was created in favour of the petitioners in the year 1978, learned Advocate for the petitioners was not able to disclose any statement in that regard either in the evidence recorded before the Trial Court, either on behalf of the petitioners or any admission in that regard by the respondents, nor there is any findings to that effect by the either of the Court below. At

this stage, while the order being dictated, the learned Advocate for the petitioners sought to draw my attention to para.no.21 of deposition Mrs.Vaishalan Shivram, the petitioner no.2, and

particularly to the statement that "**It is not true that I have stated falsely about my father-in-law being the tenant. It is not true that since beginning the rent receipts were issued in the name of my mother-in-law only. My husband used to make certain payments every month since 1978 to his mother till she died. The amounts used to were in between Rs.500-100/- every month. My mother-in-law is staying with her parents for the last 5-6 years at Andheri. It is not true that in the newly acquired flat premises A-18 only defendant no.1 is resided. It is not true that myself and my son can also be accommodated in the said flat. I had never asked the defendant no.1 in order to accommodate me at that place. It is not true that in case a decree of eviction is passed against the Defendants, no hardship will be caused because we can be accommodated in the newly acquired flat. I cannot tell, whether Plaintiff will suffer greater hardship in case decree is refused. Defendant is producing ration card, it is already marked at Exh.2."** The above portion of the testimony nowhere

discloses that the fresh tenancy in relation to the suit premises was created in favour of the petitioner no.1 either in the year 1978 or any time after the death of her mother-in-law or

father-in-law. On the contrary, it discloses the clear statement that the husband of the petitioner no.1 used to make certain payment every month since the year 1978 to his mother till her death. This itself discloses that there was clear participation in the family expenses of mother-in-law by the husband of the petitioner no.1 and this line supports to the theory of inheritance in favour of the petitioners on the death of mother-in-law of the petitioner no.1. The statements in para.no.21 of the testimony of the petitioner no.2 which were brought to my notice, in the course of dictating the order, by the learned Advocate for the petitioners, rather than supporting the contentions of the petitioners, justifying the findings arrived at by the Courts below.

5. In the circumstances, therefore, the contention that there was a fresh tenancy created in the year 1978 and the alternate accommodation was acquired by the Petitioner no.1 much prior to

that, and therefore, that cannot be the ground available to the landlord, for eviction of the petitioners, under section 13(1)(l) of the said Act, is devoid of substance. Being so, no fault

can be found with the orders passed against the petitioners of eviction by the Courts below.

6. As regards the second ground of sub-letting of the premises, once the landlord is able to establish one of the grounds when the eviction is sought for more than one ground, certainly it itself satisfies to pass the decree of eviction. Further, the contention of the petitioners that since the original defendant no.2 was the son of the Petitioner no.1 and that therefore, there cannot be sub-letting, cannot be accepted. Once, it is not in dispute that the petitioner no.1 is the tenant in relation to the suit premises, and it is further established that the petitioner no.1 shifted her residence to the newly acquired premises, then all her family members have to accompany with the petitioner no.1, and it cannot be said that the occupation of the defendant no.2, merely because he happens to be the

son of the petitioner no.1, that would not amount to sub-letting, unless it was the specific case of the petitioners and it was to be duly established by the cogent evidence that lease was obtained by the petitioners specifically for the benefit of the defendant no.2 and his family. Since, no such plea

was ever raised by the petitioners before the Courts below, nor any evidence in that regard was led, it cannot be the contention of the petitioners that the occupation of the suit premises by defendant no.2, merely because he happens to be the son of the petitioner no.1 and it would not amounting to sub-letting, cannot be accepted. Considering the same, no fault can be found with the findings arrived at by the Courts below about sub-letting of the premises.

7. For the reasons stated above, the impugned orders of both the Courts do not require interference therein in exercise of writ jurisdiction under Article 227 of Constitution of India. It is also to be noted that the findings arrived at are clearly based on the material on record and I do not find any perversity and illegality in the findings, and hence, there is no

case made out for interference in the impugned orders, and therefore, petition fails and dismissed with no order as to costs.

8. At this stage, learned Advocate for petitioners requests for stay of the order passed by the Courts below, for eviction of the

petitioners from the suit premises for the period of Eight Weeks. The learned Advocate for Respondents objected for the same. However, I am inclined to grant stay of the eviction order for the period of Eight Weeks, subject to undertaking by the Petitioners before the Registrar (General) of this Court to the effect that the petitioners will not create any third party interest in the suit premises during this period and will not induct any third person in the premises during this period. The undertaking to be filed within Four Weeks.

1.11.2004 (R.M.S.Khandeparkar, J.)